

# Animal Rights: Interconnections with Human Rights and the Environment

## 1 THE EMERGENCE AND MAINSTREAMING OF LEGAL ANIMAL RIGHTS

Legal animal rights are on the horizon.<sup>1</sup> Not too long ago, the notion of animals as holders of legal rights still seemed utopian to most. However, the idea of animal rights is not novel; it finds its early roots in the works of philosophers and social reformers such as Jeremy Bentham<sup>2</sup> and Karl Christian Friedrich Krause.<sup>3</sup> Since the advent of modern animal ethics in the late 1970s, sparked notably by Peter Singer,<sup>4</sup> animal rights have become widely theorised and popularised in moral philosophy. Though it has taken several decades for these philosophical developments to be reflected in legal arenas, the landscape has started to shift.

Animal law, and the corresponding academic field of legal animal studies, is flourishing. There is now a lively scholarly debate dedicated to establishing, elaborating and advancing the theoretical foundations and practicability of legal animal rights. Moreover, animal rights are gradually beginning to emerge and solidify in case law. Most notably, courts in Argentina<sup>5</sup> and Colombia<sup>6</sup> have extended the constitutional human right to habeas corpus and the underlying right to freedom to captive animals. Furthermore, courts in India have developed case law recognising a range of fundamental rights of animals, among them the right to life, dignity, and freedom from torture.<sup>7</sup> And in May 2020, the Islamabad High Court, too, recognised legal animal rights and, moreover, linked the protection of animals to the human rights to life in light of the current pandemic crisis which has highlighted the ‘interdependence of living beings’.<sup>8</sup> For now, these remain isolated acts of judicial recognition or creation of animal rights. The majority of the world’s legal systems continue to treat animals as objects; as property. Animals are *things*, which can be bought, sold, owned, traded, farmed, experimented upon, killed, and eaten for the sake of human utility. Although most systems also recognise animals as deserving a certain level of protection in deference to their status as living beings capable of suffering (the welfare approach), in most places animal rights have, thus far, been seen as a radical departure from a human-centred legal order which can make use of other living and non-living resources. The Argentinian and Colombian examples, along with increasing numbers of other cases elsewhere, may however represent the first manifestations of an incipient, more comprehensive formation of animal rights law.

The once quixotic idea of animal rights has thus suddenly turned into a viable legal possibility. While some still strongly object to the idea of animals having legal rights, it seems fair to say that legal animal rights are becoming mainstream. That is especially true in the world of scholarship, which continues to precede legal reality in most places: there is now a critical mass

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<sup>1</sup> S Stucki, ‘Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights’ (2020) 40 OJLS (forthcoming).

<sup>2</sup> J Bentham, *An Introduction to the Principles of Morals and Legislation* (T Payne and Son, London 1789).

<sup>3</sup> KCF Krause, *Das System der Rechtsphilosophie* (herausgegeben von KDA Röder) (Brockhaus, Leipzig 1874).

<sup>4</sup> P Singer, *Animal Liberation* (HarperCollins, New York 1975).

<sup>5</sup> Tercer Juzgado de Garantías de Mendoza 3 November 2016, Expte Nro P-72.254/15.

<sup>6</sup> Corte Suprema de Justicia 26 July 2017, AHC4806-2017 (MP: Luis Armando Tolosa Villabona). This ruling was later reversed. Corte Suprema de Justicia 16 August 2017, STL12651-2017 (MP: Fernando Castillo Cadena). In January 2020, the Constitutional Court of Colombia decided against granting habeas corpus to the animal in question.

<sup>7</sup> See, notably, Supreme Court of India 7 May 2014, civil appeal no 5387 of 2014; Kerala High Court 6 June 2000, AIR 2000 KER 340; Delhi High Court 15 May 2015, CRL MC no 2051/2015.

<sup>8</sup> Islamabad High Court 21 May 2020, WP no 1155/2019.

of legal scholars who endorse the possibility (or reality) of animal rights.<sup>9</sup> Indeed, some scholars have even gone a step further and simply take for granted that animals can, should, and do in fact have some legal rights, and proceed to explore more refined accounts of, and also to move beyond, animal rights. Many of the articles included in this issue of the *Journal of Human Rights and the Environment* reflect this development: Some of the authors argue at length that, and on what grounds, animals have rights, while others take these rights as their starting point and instead focus on their applications and implications. Still others go further, finding the notion of animal rights problematic because it does not go far enough, or builds on old ways of (Western, rationalistic, male, hegemonic) thinking that need to be decolonised, and from which animal law needs to be emancipated.

## 2. RIGHTS OF HUMANS, ANIMALS AND NATURE: CONNECTIONS AND INTERPLAY

An overarching theme running through animal rights discourse—one popping up throughout the contributions to this edition—is the (both symbiotic and at times conflicting) relationship, and the conceptual and political kinship, between animal rights, human rights and rights of nature. Animal rights are often discussed as a subspecies of the natural rights tradition (in the jurisprudential sense) which gave rise to the modern notion of human rights — and which has also inspired the recent movement toward the rights of rivers, mountains and ecosystems. From its inception, the language of animal rights has relied heavily, whether explicitly or implicitly, on the conceptual vocabulary of human rights. In their theoretical framing, animal rights are typically based on the very structures and features that justify the time-honoured concept of human rights. Whether the latter are grounded in agency, personhood, basic interests and needs, capabilities, vulnerability or precarity, the human rights framework offers fruitful points of connection and overlap with animal rights. Some core human rights, such as the rights to life, liberty, bodily integrity, and freedom from torture and inhumane treatment, can be readily rethought as animals' rights, too.

The search for interconnections between human and animal rights may, for one thing, be driven by rhetorical or strategic motives. Human rights, as a generally well-accepted and well-established idea and institution, offer a valuable point of reference for unfolding the more junior idea of animal rights. Animal lawyers need not reinvent the wheel — rather, they can seize and adapt the available normative and regulatory toolbox, by applying, for example, established principles of (human) rights formulation, adjudication, conflict resolution or implementation to the animal context. Familiar arguments from analogy, similarity or consistency make use of this cross-comparative approach, and have contributed to the main building blocks of (first wave) animal rights theory.<sup>10</sup>

But on a deeper level, viewing human and animal rights as part of the same normative project may also be undergirded by political and socio-psychological considerations. It has long been recognised in the human rights world that a key element in the power and force of human rights discourses is their extensibility. They build at a fundamental level from what is, in the animal law context, usually referred to as the argument from similarity. Arguments in favour of the rights of individuals within a more dominant or privileged strata of society often implicitly support the case for the extension of those same rights to disadvantaged or excluded groups.<sup>11</sup>

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<sup>9</sup> On the 'reality' of legal animal rights, see Visa AJ Kurki, *A Theory of Legal Personhood* (Oxford University Press 2019).

<sup>10</sup> On the distinction between first wave and second wave ethical traditions see Iyan Ofori in this issue.

<sup>11</sup> C Gearty, 'Do Human Rights Help or Hinder Environmental Protection?' (2010) 1(1) *Journal of Human Rights and the Environment* 7; see also T Sparks, 'Protection of Animals Through Human Rights: The Case-Law of the European Court of Human Rights' in A Peters (ed), *Studies in Global Animal Law* (Springer Open, Berlin 2020).

That the very structure of human rights discourses lends itself to extension on grounds of similarity is significant, but equally important is the increasing recognition of a factual link between the concerns of human and animal rights.

From the nineteenth-century practice of including non-European peoples as exhibits in zoos, to the labelling of Rwandan Tutsis as ‘cockroaches’ in the run up to and during the Rwandan genocide, to the rhetoric of Donald Trump in relation to the migrants trying to cross the Mexico-US border, the equation of people or population groups with animals has long been a horrifyingly successful strategy on the part of those wishing to instigate or justify mass violations of human rights.<sup>12</sup> Furthermore, scholarship has identified significant parallels between the legal treatment of animal rights and women’s rights,<sup>13</sup> and the weaponisation of animal-use practices as a tool to further the colonisation agenda by European settlers in the Americas,<sup>14</sup> and one of the current editors has elsewhere discussed the striking parallels between the sanitisation of mass violence inherent in the regime of animal welfare law and that of international humanitarian law.<sup>15</sup> Increasingly, too, research in the field of social psychology is tearing down the notion that human rights and animal rights can be separated at the cognitive level: insights drawn from experimental studies suggest that the act of rationalising and justifying the mistreatment and slaughtering of animals makes it easier for humans to rationalise acts of violence against other humans.<sup>16</sup>

Even apart from these notable political interconnections and interlocking mechanisms of collective violence, current events strongly indicate the need for a wider view of the rights of humans. Human wellbeing has now to be understood as incorporating the rights and interests both of animals and of ecosystems, in recognition of the dependence of humans and human society on healthy and functioning eco- and environmental systems. There is increasingly strong evidence to suggest that the emergence of zoonotic diseases with pandemic potential (such as the SARS-CoV-2 virus responsible for the ongoing COVID-19 pandemic) is made more likely by biodiversity loss, as the reduction in diversity of species and genotypes decreases the resilience of the natural world itself to the development of such diseases.<sup>17</sup> In parallel, the transfer of pathogens from animals to humans is made ever more likely by the ever-closer contact into which humans and animals are being brought by the destruction of habitats, the loss of wild

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<sup>12</sup> A Peters, ‘Liberté, Égalité, Animalité: Human-Animal Comparisons in Law’ (2016) 5 TEL 25, 25, 32-33.

<sup>13</sup> Catherine MacKinnon, ‘Of Mice and Men: A Feminist Fragment on Animal Rights’ in Cass Sunstein and Martha C. Nussbaum (eds), *Animal Rights: Current Debates and New Directions* (Oxford University Press 2004).

<sup>14</sup> See Maneesha Deckha in this issue.

<sup>15</sup> S Stucki, ‘(Certified) Human Violence? Animal Production, the Ambivalence of Humanizing the Inhumane, and What International Humanitarian Law Has to Do with It’ in A Peters (ed), *Studies in Global Animal Law* (Springer Open, Berlin 2020).

<sup>16</sup> See Joe Wills in this issue, in which Wills engages extensively with this literature; and further W Kymlicka, ‘Human Rights Without Human Supremacism’ (2017) 48 *Canadian Journal of Philosophy* 763. For a critical take on the “link thesis”, see J Marceau, *Beyond Cages: Animal Law and Criminal Punishment* (CUP, Cambridge 2019), 193-250. Note, though, that Marceau’s primary target is the so-called “graduation” or “escalation” thesis, which holds that violence against animals can be a predictor of future violence against humans in a specific individual. At this individual level we accept Marceau’s conclusion that the link is insufficiently definite to be a sound basis for policy. We, like Wills, do not invoke the link in this sense here, but rather refer to a societal scale malaise.

<sup>17</sup> JR Rohr and others, ‘Towards Common Ground in the Biodiversity–Disease Debate’ (2020) 4 *Nature Ecology & Evolution* 24; F Keesing and others, ‘Impacts of Biodiversity on the Emergence and Transmission of Infectious Diseases’ (2010) 468 *Nature* 647. Two States—Germany and Chile—have formally asked the IPBES to assess the link between biodiversity loss and the emergence of diseases with pandemic potential in a future report, and UNEP has recently announced a program of work on environmental factors in the emergence of zoonotic diseases: United Nations Environment Programme, ‘Press Release: UNEP Steps up Work on Zoonotics, Protecting Environment to Reduce Pandemic Risks’ (12 May 2020) <<https://www.unenvironment.org/news-and-stories/press-release/unep-steps-work-zoonotics-protecting-environment-reduce-pandemic>> accessed 12 May 2020.

spaces, urban sprawl, and live animal markets.<sup>18</sup> An additional, and deeply worrying, threat arises from the habitual overuse of antibiotics in modern industrial farming, which is considered to be a major factor in the rise of antibiotic resistance, and which threatens the emergence of pathogens yet more destructive than SARS-CoV-2.<sup>19</sup> Purely human interest would, even in the absence of any notion of animal welfare or rights, demand an urgent reassessment of humans' relations with other species and with the natural world. A cross-comparative or more 'holistic' mind-set for thinking about the rights of humans, animals, and nature thus seems warranted against the backdrop of their real-life interconnectedness.

### 3. CONTRIBUTIONS TO THIS ISSUE

The articles in this issue of the journal have been selected to explore the increasingly close connections between animal rights in moral and ethical theory, and the treatment of animals in law. In so doing, the articles highlight manifold and deep connections between animal and human rights, at the level of cognitive frameworks and practical implementation. Although the majority of the contributions adopt or adapt human rights-derived frameworks to the animal law context, the utility of the human rights framework in this field is also questioned, with some authors advocating a distinctive, 'second wave' approach.

The first two articles drill down into the fundamental questions underlying animal rights. In his article 'Animalhood, Interests and Rights', Juan Pablo Mañalich argues that animals should be understood as "rights-subjects". Basing his argument on the interest theory of rights, Mañalich notes that animals have intentions and therefore interests, as opposed to nonsentient living beings, which only have needs. Animals can therefore hold legal rights. Mañalich employs Michael Tooley's notion of the 'particular-interest principle' as a constraint for meaningful ascriptions of rights. According to the principle, beings can only hold such rights that could, at least in theory, further some of their interests. Mañalich argues that all animals which meet the criteria of 'quasi-personhood' should have the legal right to continued existence — the holding of which Mañalich understands as legal personhood. Thus, all animals that are quasi-persons should be recognised as legal persons from the point of birth. Furthermore, even animals that do not meet the criteria of quasi-personhood should, according to Mañalich, be recognised as holders of legal rights — though what rights such animals should hold would depend on their interests.

Joshua Jowitt, too, engages with the fundamental justification for animal rights in his contribution, 'Legal Rights for Animals: Aspiration or Logical Necessity'. Jowitt argues from consistency, using the moral theory of Alan Gewirth to ground animal rights in the same source as human rights. Given that all agents necessarily claim a right to enjoy the conditions enabling them to exercise their agency (and thus to have at least the potential of realising their conception of the good), consistency requires such agents to recognise the right to the basic conditions of agency in all other prospective purposive agents: failure to do so would require them to reject the very basis they claim as sufficient for their own rights thereto. Jowitt's is an ambitious justification for the moral rights of animals, in that although it shares many of the features of the similarity approach, it goes beyond it. Rather than relying on the moral force of consistency and on arguments from hypocrisy, he argues that inconsistency would be impermissible: it would necessarily invalidate the claim being made on the part of humans to possess basic moral rights.

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<sup>18</sup> S Díaz and others, 'Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services - Advance Version' (4 May 2019) 22; Keesing and others (n 17).

<sup>19</sup> JR Rohr and others, 'Emerging Human Infectious Diseases and the Links to Global Food Production' (2019) 2 *Nature Sustainability* 445; C Rochford and others, 'Global Governance of Antimicrobial Resistance' (2018) 391 *The Lancet* 1976.

As a result, any law that does not recognise and respect the basic rights ascribable to any and all prospective purposive agents — whatever their species — does not satisfy the criteria for validity as law at all.

In ‘Animal Rights, Legal Personhood and Cognitive Capacity: Addressing “Levelling-Down” Concerns’, Joe Wills scrutinises a common concern levelled against animal rights: that extending rights to animals on the basis of their being sufficiently similar to so-called human ‘marginal cases’ might endanger the moral and legal status of humans, especially those with severe cognitive impairments. Wills argues that this objection against the argument from species overlap is misplaced for two reasons. First, it is conceptually ill-founded, as it misses the point that animal rights advocates rely on intellectual capacities for pragmatic rather than normative reasons and invoke capacity as a sufficient rather than as a necessary condition for personhood. Second, drawing on empirical and socio-psychological findings, Wills argues that speciesism itself operates as a multiplier of oppressive dynamics towards marginalised humans, and conversely, that non-speciesist animal rights can contribute to a more inclusive and respectful human rights culture.

In ‘The Conceptual Challenges of Invasive Alien Species to Non-Human Rights’, Guillaume Futhazar addresses the problem of nonhuman rights collisions that inevitably arise once natural entities (such as animals and the environment) come to populate the realm of legal personhood. The case of invasive alien species perfectly exemplifies such a clash of individual animals’ right to life and an ecosystem’s right to integrity. Futhazar proposes to resolve this nonhuman rights conflict by drawing on established principles governing the limitation of human rights, notably the balancing of private and public interests. Lastly, because nonhuman rights representation and adjudication necessarily remain discussions among humans, Futhazar stresses that such practices must engage in epistemic plurality in order to gain legitimacy.

In her contribution to the edition, ‘Veganism, Dairy and Decolonization’, Maneesha Deckha examines the conflicts and confluences between animal advocacy and the rights of indigenous peoples. Engaging deeply with the history of animal use practices in the colonial era, and using the European colonisation of Canada as her case study, Deckha questions the construction of an inherent opposition between vegan animal rights concerns and the traditional animal-food interests of indigenous peoples. Highlighting traditions of respect for nature and the importance of familial and mother-child bonds in many indigenous cultures in Canada, she argues that the rejection of dairy that distinguishes veganism makes it a more natural ally to the decolonisation agenda than is often appreciated. She argues in favour of a reframing of veganism to highlight its rejection of the dairy industry as having the potential to bring important critical and decolonizing value convergences to the fore.

In his article ‘Second Wave Animal Ethics and (Global) Animal Law: A View from the Margins’, Iyan Offor contextualises animal ethics in terms of two waves. Animal law scholars have, according to Offor, so far mostly based their work on utilitarian and rights-based approaches to animal ethics. However, Offor highlights numerous problems with such first-wave approaches, such as their assumption that animals deserve moral and legal consideration in virtue of being like humans, and their reliance on liberal concepts such as rights. Instead, Offor suggests that animal law scholarship would benefit greatly from second-wave, critical, intersectional animal ethics.

In the final article in the collection, ‘Is There a Need for a New, an Ecological, Understanding of Legal Animal Rights?’, Brian Favre too argues that there is a need to move beyond the traditional animal rights debate. Animal rights, he argues, offer only a short-term and partial solution to the task of integrating human and animal societies in ways that allow a mutual accommodation. Although animal rights contest the place of animals within the legal order, rights paradigms rely on the radical subjectivism that structures Western legal thought and its central, dichotomous division between ‘persons’ and ‘things’. As such, animal rights offer a ‘revolution’ only at a shallow level: they remain within the larger, dualistic and anthropocentric

paradigm. In order to move beyond a wholly anthropocentric legal order, Favre argues, we need to dispense with the focus on the individual rights subject, and instead move to a complexity-responsive and situated analysis of individuals within communities, which he calls an *ecological* understanding of law.

Together, the papers in this issue show the maturity of the field of animal law. Animal rights are no longer to be confined to the margins of academic and broader social debate; rather, they are an essential part of the discussion on how to deal with the manifold social and ecological problems with which we are now confronted. Though they may have lost some of their radical, revolutionary flair — indeed, as this edition shows, animal rights are now seen in some quarters as the orthodoxy to be critiqued — they have gained a weight which indicates that the idea has come of age.

Particularly striking in all of the contributions to this thematic issue are the parallels between animal rights and human rights, human needs, and human wellbeing. Mañalich and Jowitt demonstrate that some of the major philosophical justifications for human rights must, if applied consistently, also give rise to rights for at least some animals. Wills shows that the oft-heard rebuttal — that animal rights arguments from human marginal cases threaten the rights of certain humans — is incorrectly premised and is not borne out by socio-psychological evidence. Futhazar draws from the lived experience of balancing individual human rights and societal imperatives to imagine a legally mediated accommodation between animal and ecosystem rights paradigms. Deckha explores the natural convergence of interests between certain animal rights positions — primarily ethical veganism — and the decolonisation agenda. And finally, though they begin from very different premises and employ different methodologies, both Offor and Favre question the value of rights frameworks, preferring instead contextual and relational understandings of law as being better suited to meeting both humans' and animals' needs.

Reading the articles in this collection as a set, it is clear that a sharp dichotomy between human and animals rights is not just dubious, but that there are a wealth of productive interactions to be had between lawyers working on animal rights, human rights and environmental law, both from the academic and the activist standpoints. Viewed in this way, and in addition to their own manifold contributions, the articles in this collection set out a compelling and exciting future research agenda. We look forward to seeing the results.

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